THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12660 of 2007

Dated: 01.10.2007

Between:

Shri Mahavir Prasad Agarwal.

.. Petitioner

And

Chief Rationing Officer at Secunderabad,
Opposite Anand Theater,
Secunderabad.

.. Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12660 of 2007

ORDER:

Heard Sri K.Jagadishwar Reddy, learned counsel representing the writ petitioner, and the learned Assistant Government Pleader for Civil Supplies.

2. The writ petition is filed for a writ of Mandamus declaring the proceedings Ref.No.C1/2482/2007, dated 08.06.2007, issued by the respondent as without jurisdiction, without authority of law which is illegal, arbitrary and unconstitutional and at any rate arbitrary as the same is issued after a lapse of 10 years from the alleged inspection or to pass such any other appropriate order or orders.

3. It is stated by the writ petitioner that he is the Proprietor of M/s. Chandra Auto Service Station, Sanathnagar, Hyderabad, having licence under A.P. Petroleum Products (L & D) Order, 1980 for running Petrol filling station. It is further stated that the petitioner is running the same without any complaint whatsoever. The respondent quite surprisingly issued notice dated 08.06.2007 (received by the petitioner on 15.06.2007 at 5.00 p.m.) stating that the Deputy Superintendent of Police, Vigilance cell (Civil Supplies Department), Hyderabad, has inspected the petitioner's petrol filling station and drawn samples of MS & HSD on 10.12.1998 and sent to Director, FSL, A.P., Hyderabad for conducting analysis. It is also stated that the report of the FSL

shows variations beyond permissible limits. Basing on the same, impugned proceedings Ref.No.C1/2482/2007, dated 08.06.2007, was issued asking the petitioner to explain why disciplinary action should not be taken against him for the above lapse with in 48 hours of the receipt of that notice under Clause 5 and 8 of MS & HSD (Prevention of Malpractices in supply and distribution) Order 1990 read with Section 7 and 8 of E.C. Act. It is also stated that the petitioner received the same on 15.06.2007 and sent a telegram on 16.06.2007 stating that copy of analysis report has not been supplied to him and also no useful purpose will be served by continuing the proceedings, as the right of retesting is lost. The petitioner does not remember whether any inspection has been done and no second sample is given to him and even if department has second sample, it will not be fit for retesting. But the respondent is bent upon passing orders against the petitioner in which case he will suffer irreparable loss and hardship. If any adverse order is passed, the petitioner himself and all the workers who are depended on the petrol filling station would be on road without livelihood. It is further stated that the petitioner does not have any record of inspection nor the inspecting authorities provided copy of the same.

4. It is further stated by the petitioner in paragraph 3 of the affidavit filed in support of the writ petition that more so, this MS & HSD (Prevention of Malpractices in Supply and distribution) Order, 1990 is repealed by MS & HSD (Prevention of Malpractices in Supply and distribution) Order, 1998. Again MS & HSD (Prevention of Malpractices in Supply and distribution) Order 1998 is repealed by MS & HSD (Prevention of Malpractices in Supply and distribution) Order 2005, as such, impugned proceedings initiated by respondents is

without jurisdiction and without authority of law as it was issued after a lapse of ten years. The respondent has granted 48 hours time, which shows that the respondent is bent upon passing orders adverse to petitioner in which case petitioner suffer irreparable loss and hardship. It is further stated that the petitioner is 70 years old and except the petrol bunk, the petitioner does not have any other source of income and the petitioner also is a heart patient and if his license is cancelled basing on so called inspection, which was conducted ten years back, which is against the principles of natural justice, he would suffer irreparable loss.

5. In the counter filed, it is stated that the petitioner is the Proprietor of M/s. Chandra Auto Service Station, Sanathnagar, Hyderabad and a license bearing No.C3/151/CRO/80-81/MS/HSD/HYD was issued to him from the office of the Chief Rationing Officer, Hyderabad under APPP (L&RS) Order, 1980 for conducting business in Petrol and Diesel. While so, the Commissioner of Police, Cyberabad, Hyderabad has addressed a letter to the Chief Rationing Officer, Hyderabad, on 29.05.2007, requesting the Chief Rationing Officer, Hyderabad to accord permission to prosecute the petitioner, stating that the petitioner is liable to be punished under Section 7 & 8 of the EC Act, 1955 for contravening Sections 5 & 8 of the MS & HSD (Prevention of malpractices in supply and distribution) Order, 1990. It is informed by the Commissioner of Police, Cyberabad that on credible information that the petitioner has been indulging in clandestine business and not maintaining true and correct accounts, the then Deputy Superintendent of Police, Vigilance Cell, Civil Supplies Department, Hyderabad has inspected the petrol bunk on 10.12.1998, drawn the samples of MS and HSD and sent the same to the Director, Forensic Science

Laboratory, Hyderabad for analysis of the samples. It is informed that as per the report of the Director, Forensic Science Laboratory, the variation of density of HSD is beyond permissible variation of 0.0030 and the petitioner is liable to be punished u/s.7 & 8 of the EC Act, 1955. It is further stated that on verification of the record sent by the Station House Officer, Sanathnagar Police Station, Cyberabad, it is noticed that the case was originally registered as Crime No.96/VC-RR/1998 and was reported to the Collector and District Magistrate, Ranga Reddy District. On verification of 6-A report submitted by inspecting officer, it is noticed that the case was booked for contravention of clause 5 & 8 of MS & HSD (Prevention of Malpractices in Supply and Distribution) Order, 1990 read with Section 7 and 8 of the EC Act, 1955, under cover of a panchanama, duly collecting three sets of samples of MS & HSD. One set samples of MS & HSD were handed over to the petitioner. The complainant retained one set samples and one set samples of MS & HSD were sent to Forensic Science Laboratory for testing. It is noticed that the Government and the Director General of Police, A.P., Hyderabad have instructed to take over all Under Investigation and Pending Trial cases of erstwhile Vigilance cell, Civil Supplies Department by the local police. Accordingly, the Inspector of Police, Sanathnagar Police Station has re-registered the case as Crime No.321/2004 and once again addressed the case to the Collector and District Magistrate, Ranga Reddy District.

6. It is further stated in the counter that it is true that the MS & HSD (Prevention of malpractices in supply and distribution) Order, 1990 is repealed by MS & HSD (Prevention of malpractices in supply and distribution) Order, 1998 and again repealed by MS & HSD

(Prevention of malpractices in supply and distribution) Order, 2005. However, in view of the instructions of the Government and the Director General of Police, A.P., Hyderabad to take over all Under Investigation and Pending Trial Cases of erstwhile Vigilance Cell, Civil Supplies Department by the local police, the Commissioner of Police, Cyberabad has addressed a letter to the Chief Rationing Officer, Hyderabad on 29.05.2007 requesting the Chief Rationing Officer, Hyderabad to accord permission to prosecute the petitioner stating that the petitioner is liable to be punished under Section 7 and 8 of the EC Act, 1955, for contravening Sections 5 & 6 of the MS & HSD (Prevenion of malpractices in supply and distribution) Order, 1990. It is also stated that the Commissioner of Police, Cyberabad, addressed a letter by Proceedings No.782/C1/CYB/2005-2007 on 29.05.2007 seeking permission to prosecute the accused in Cr.No.321 of 2004 under Section 5 and 8 of the MS & HSD (Prevenion of malpractices in supply and distribution) Order, 1990, and accordingly, a show cause notice was issued to the petitioner on 08.06.2007 and it was served on the petitioner through office messenger on 15.06.2007 with an opportunity to the petitioner to explain before passing any orders, since the inspection was conducted ten years back. It is also stated that the petitioner has addressed to the Chief Rationing Officer, Hyderabad through telegram dated 17.06.2007 to supply all relevant documents and seeking extension of time, and the same is under consideration. The Inspector of Police, Sanathnagar Police Station has also reported a 6-A case against the petitioner on 20.06.2007 for taking further action in the matter. Further, it is stated that the impugned proceedings is only a notice issued by the Chief Rationing Officer to explain the reasons for the contravention of Provisions of the Act.

7. Certain submissions were made that because of the inordinate delay, further proceeding with the matter would cause serious prejudice to the petitioner.

8. In the light of the facts and circumstances, the petitioner is given liberty to explain all the facts and circumstances in reply to the showcause notice issued to him and it is needless to say that the competent authority to consider the same and dispose of the same in accordance with law.

9. Accordingly, the writ petition is disposed of. No order as to costs.

(P.S.NARAYANA,J)

Dt.01.10.2007
v v